

Introduced by Senator Kopp

December 12, 1996

An act to amend Sections 1526, 3045.1, and 3045.4 of the Civil Code, to amend Section 998 of the Code of Civil Procedure, to amend Section 3311 of the Commercial Code, and to amend Sections 12583 and 68616 of the Government Code, relating to civil law.

LEGISLATIVE COUNSEL'S DIGEST

SB 73, as introduced, Kopp. Civil procedure: negotiable instruments.

(1) Existing provisions of the Civil Code contain provisions governing the effect of a notation on an instrument, such as a check, that cashing the check will constitute acceptance as full payment for a claim. More recently enacted provisions of the Commercial Code also govern the effect of that type of notation on a check or similar instrument.

The provisions in the Civil Code provide that the notation is ineffective if the notation is stricken out, or if the check is cashed inadvertently without knowledge of the notation, but contain various exceptions.

The provisions of the Commercial Code generally provide that the notation is effective if the instrument is paid and various other conditions are met, but contain various exceptions.

This bill would limit the application of the more recently enacted provisions of the Commercial Code to claims for goods or services used or bought for use primarily for personal, family, or household purposes. It would make the earlier

enacted provisions contained in the Civil Code applicable to all other claims for goods or services.

(2) Under existing law, a hospital has a lien for the value of emergency medical or other services provided to the victim of an accident or wrongful conduct against any amount recovered by the victim on account of the accident or wrongful conduct, other than amounts recovered under workers' compensation laws. Under existing law, if prescribed notice of the lien is given to the persons known to the hospital and alleged to be liable on the claim, any person so notified who is liable on the claim and who makes payment on the claim to the injured person or his or her representative is liable to the hospital for the amount of its lien, as specified.

This bill would exempt uninsured and underinsured motorist coverage from these provisions.

(3) Existing law provides that if a settlement offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff shall not recover his or her costs and shall pay the defendant's costs from the time of the offer. Furthermore, costs incurred by the defendant are required to be deducted from any damages awarded the plaintiff; and if those costs exceed the damages awarded the plaintiff, a judgment for the net amount shall be awarded to the defendant; and, for these purposes, a plaintiff in a cause of action not based on tort is not deemed to have obtained a more favorable judgment unless the judgment obtained by the plaintiff, exclusive of attorney's fees and costs, exceeds the settlement offer made by the defendant.

This bill would revise these provisions to, among other things, provide that the latter provision described above applies to causes of action in which the award of attorney's fees is allowed by a contract, rather than causes of action not based on tort.

(4) Existing law prohibits trial court delay reduction rules from requiring shorter deadlines than those specified.

This bill would make a clarifying change with respect to status conferences to determine the status of service of process.

(5) Existing law, the Uniform Supervision of Trustees for Charitable Purposes Act, applies to all charitable corporations



and trustees holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers, but does not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation or officer, director, or trustee of a religious organization that holds property for religious purposes, to a cemetery corporation, to a committee, as defined, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan.

This bill would provide that the filing, registration, and reporting provisions of the Uniform Supervision of Trustees for Charitable Purposes Act do not apply to the entities specified above.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1526 of the Civil Code is
2 amended to read:

3 1526. (a) Where a claim *for goods or services, other*
4 *than goods or services used or bought for use primarily for*
5 *personal, family, or household purposes*, is disputed or
6 unliquidated and a check or draft is tendered by the
7 debtor in settlement thereof in full discharge of the claim,
8 and the words “payment in full” or other words of similar
9 meaning are notated on the check or draft, the
10 acceptance of the check or draft does not constitute an
11 accord and satisfaction if the creditor protests against
12 accepting the tender in full payment by striking out or
13 otherwise deleting that notation or if the acceptance of
14 the check or draft was inadvertent or without knowledge
15 of the notation.

16 (b) Notwithstanding subdivision (a), the acceptance
17 of a check or draft constitutes an accord and satisfaction
18 if a check or draft is tendered pursuant to a composition
19 or extension agreement between a debtor and its

1 creditors, and pursuant to that composition or extension
2 agreement, all creditors of the same class are accorded
3 similar treatment, and the creditor receives the check or
4 draft with knowledge of the restriction.

5 A creditor shall be conclusively presumed to have
6 knowledge of the restriction if a creditor either:

7 (1) Has, previous to the receipt of the check or draft,
8 executed a written consent to the composition or
9 extension agreement.

10 (2) Has been given, not less than 15 days nor more than
11 90 days prior to receipt of the check or draft, notice, in
12 writing, that a check or draft will be tendered with a
13 restrictive endorsement and that acceptance and cashing
14 of the check or draft will constitute an accord and
15 satisfaction.

16 (c) Notwithstanding subdivision (a), the acceptance
17 of a check or draft by a creditor constitutes an accord and
18 satisfaction when the check or draft is issued pursuant to
19 or in conjunction with a release of a claim.

20 (d) For the purposes of paragraph (2) of subdivision
21 (b), mailing the notice by first-class mail, postage
22 prepaid, addressed to the address shown for the creditor
23 on the debtor's books or such other address as the creditor
24 may designate in writing constitutes notice.

25 SEC. 2. Section 3045.1 of the Civil Code is amended
26 to read:

27 3045.1. ~~Every~~ *Subject to the limitations set forth in*
28 *Section 3045.4, every* person, partnership, association,
29 corporation, public entity, or other institution or body
30 maintaining a hospital licensed under the laws of this state
31 which furnishes emergency and ongoing medical or other
32 services to any person injured by reason of an accident or
33 negligent or other wrongful act not covered by Division
34 4 (commencing with Section 3201) or Division 4.5
35 (commencing with Section 6100) of the Labor Code,
36 shall, if the person has a claim against another for damages
37 on account of his or her injuries, have a lien upon the
38 damages recovered, or to be recovered, by the person, or
39 by his or her heirs or personal representative in case of his
40 or her death to the extent of the amount of the reasonable



1 and necessary charges of the hospital and any hospital
2 affiliated health facility, as defined in Section 1250 of the
3 Health and Safety Code, in which services are provided
4 for the treatment, care, and maintenance of the person
5 in the hospital or health facility affiliated with the hospital
6 resulting from that accident or negligent or other
7 wrongful act.

8 SEC. 3. Section 3045.4 of the Civil Code is amended
9 to read:

10 3045.4. (a) Any person, firm, or corporation,
11 including, but not limited to, an insurance carrier,
12 making any payment to the injured person, or to his or
13 her attorney, heirs, or legal representative, for the
14 injuries he or she sustained, after the receipt of the notice
15 as provided by Section 3045.3, without paying to the
16 association, corporation, public entity, or other institution
17 or body maintaining the hospital the amount of its lien
18 claimed in the notice, or so much thereof as can be
19 satisfied out of 50 percent of the moneys due under any
20 final judgment, compromise, or settlement agreement
21 after paying any prior liens shall be liable to the person,
22 partnership, association, corporation, public entity, or
23 other institution or body maintaining the hospital for the
24 amount of its lien claimed in the notice which the hospital
25 was entitled to receive as payment for the medical care
26 and services rendered to the injured person.

27 (b) *This section shall not apply to a policy of insurance*
28 *to the extent it provides coverage for an uninsured or*
29 *underinsured motorist.*

30 SEC. 4. Section 998 of the Code of Civil Procedure is
31 amended to read:

32 998. (a) The costs allowed under Sections 1031 and
33 1032 shall be withheld or augmented as provided in this
34 section.

35 (b) Not less than 10 days prior to commencement of
36 trial, any party may serve an offer in writing upon any
37 other party to the action to allow judgment to be taken
38 in accordance with the terms and conditions stated at that
39 time.

1 (1) If the offer is accepted, the offer with proof of
2 acceptance shall be filed and the clerk or the judge shall
3 enter judgment accordingly.

4 (2) If the offer is not accepted prior to trial or within
5 30 days after it is made, whichever occurs first, it shall be
6 deemed withdrawn, and cannot be given in evidence
7 upon the trial.

8 (3) For purposes of this subdivision, a trial shall be
9 deemed to be actually commenced at the beginning of
10 the opening statement of the plaintiff or counsel, and if
11 there is no opening statement, then at the time of the
12 administering of the oath or affirmation to the first
13 witness, or the introduction of any evidence.

14 (c) If an offer made by a defendant is not accepted and
15 the plaintiff fails to obtain a more favorable judgment, the
16 plaintiff shall not recover his or her costs and shall pay the
17 defendant's costs from the time of the offer. ~~For purposes~~
18 ~~of this section, a~~

19 (1) A plaintiff in a cause of action ~~not based on tort in~~
20 *which attorney's fees are allowed by a contract* shall not
21 be deemed to have obtained a more favorable judgment
22 unless the judgment obtained by the plaintiff, exclusive
23 of attorney's fees and costs, exceeds ~~the~~ *an* offer made by
24 the defendant ~~pursuant to this section, exclusive of~~
25 *attorney's fees and costs.* ~~In~~

26 (2) *In* addition, in any action or proceeding other than
27 an eminent domain action, the court, in its discretion,
28 may require the plaintiff to pay the defendant's costs
29 from the date of filing of the complaint and a reasonable
30 sum to cover costs of the services of expert witnesses, who
31 are not regular employees of any party, actually incurred
32 and reasonably necessary in either, or both, the
33 preparation or trial of the case by the defendant.

34 (3) *The costs under this section shall be deducted from*
35 *any damages awarded in favor of the plaintiff.*

36 (4) *If the costs awarded under this section exceed the*
37 *amount of the damages awarded to the plaintiff, the net*
38 *amount shall be awarded to the defendant; and judgment*
39 *shall be entered accordingly.*

(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment, the court in its discretion may require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, the preparation or trial of the case by the plaintiff, in addition to plaintiff's costs.

~~(e) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the costs under this section shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment shall be entered accordingly.~~

~~(f)~~ Police officers shall be deemed to be expert witnesses for the purposes of this section; plaintiff includes a cross-complainant and defendant includes a cross-defendant. Any judgment entered pursuant to this section shall be deemed to be a compromise settlement.

~~(g)~~

~~(f)~~ This chapter does not apply to an offer which is made by a plaintiff in an eminent domain action.

~~(h)~~

(g) The costs for services of expert witnesses for trial under subdivisions (c) and (d) shall not exceed those specified in Section 68092.5 of the Government Code.

SEC. 5. Section 3311 of the Commercial Code is amended to read:

3311. (a) If a person against whom a claim *for goods or services used or bought for use primarily for personal, family, or household purposes* is asserted proves that (1) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (2) the amount of the claim was unliquidated or subject to a bona fide dispute, and (3) the claimant obtained payment of the instrument, the following subdivisions apply.

(b) Unless subdivision (c) applies, the claim is discharged if the person against whom the claim is

1 asserted proves that the instrument or an accompanying
2 written communication contained a conspicuous
3 statement to the effect that the instrument was tendered
4 as full satisfaction of the claim.

5 (c) Subject to subdivision (d), a claim is not discharged
6 under subdivision (b) if either of the following applies:

7 (1) The claimant, if an organization, proves that (A)
8 within a reasonable time before the tender, the claimant
9 sent a conspicuous statement to the person against whom
10 the claim is asserted that communications concerning
11 disputed debts, including an instrument tendered as full
12 satisfaction of a debt, are to be sent to a designated person,
13 office, or place, and (B) the instrument or accompanying
14 communication was not received by that designated
15 person, office, or place.

16 (2) The claimant, whether or not an organization,
17 proves that within 90 days after payment of the
18 instrument, the claimant tendered repayment of the
19 amount of the instrument to the person against whom the
20 claim is asserted. This paragraph does not apply if the
21 claimant is an organization that sent a statement
22 complying with subparagraph (A) of paragraph (1).

23 (d) A claim is discharged if the person against whom
24 the claim is asserted proves that within a reasonable time
25 before collection of the instrument was initiated, the
26 claimant, or an agent of the claimant having direct
27 responsibility with respect to the disputed obligation,
28 knew that the instrument was tendered in full satisfaction
29 of the claim.

30 SEC. 6. Section 12583 of the Government Code is
31 amended to read:

32 12583. ~~This article does~~ *The filing, registration, and*
33 *reporting provisions of this article do* not apply to the
34 United States, any state, territory, or possession of the
35 United States, the District of Columbia, the
36 Commonwealth of Puerto Rico, or to any of their agencies
37 or governmental subdivisions, to any religious
38 corporation sole or other religious corporation or
39 organization ~~which~~ *that* holds property for religious
40 purposes, or to any officer, director, or trustee thereof



1 who holds property for like purposes, to a cemetery
2 corporation regulated under Chapter 19 (*commencing*
3 *with Section 9600*) of Division 3 of the Business and
4 Professions Code, or to any committee as defined in
5 Section 82013 ~~which~~ *that* is required to and does file any
6 statement pursuant to ~~the provisions of~~ Article 2
7 (*commencing with Section 84200*) of Chapter 4 of Title
8 9, or to a charitable corporation organized and operated
9 primarily as a religious organization, educational
10 institution, hospital, or a health care service plan licensed
11 pursuant to Section 1349 of the Health and Safety Code.

12 SEC. 7. Section 68616 of the Government Code is
13 amended to read:

14 68616. Delay reduction rules shall not require shorter
15 time periods than as follows:

16 (a) Service of the complaint within 60 days after filing.
17 Exceptions, for longer periods of time, may be granted as
18 authorized by local rule *and shall be granted on a showing*
19 *that service cannot be achieved within the time required*
20 *with the exercise of due diligence.*

21 (b) Service of responsive pleadings within 30 days
22 after service of the complaint. The parties may stipulate
23 to an additional 15 days. Exceptions, for longer periods of
24 time, may be granted as authorized by local rule.

25 (c) Time for service of notice or other paper under
26 Sections 1005 and 1013 of the Code of Civil Procedure and
27 time to plead after service of summons under Section
28 412.20 of the Code of Civil Procedure shall not be
29 shortened except as provided in those sections.

30 (d) Within 30 days of service of the responsive
31 pleadings, the parties may, by stipulation filed with the
32 court, agree to a single continuance not to exceed 30 days.

33 It is the intent of the Legislature that these stipulations
34 not detract from the efforts of the courts to comply with
35 standards of timely disposition. To this extent, the Judicial
36 Council shall develop statistics that distinguish between
37 cases involving, and not involving, these stipulations.

38 (e) No status conference, or similar event, other than
39 a challenge to the jurisdiction of the court, may be
40 required to be conducted sooner than 30 days after

1 service of the first responsive pleadings, or no sooner than
2 30 days after expiration of a stipulated continuance, if any,
3 pursuant to subdivision (d). *However, nothing in this*
4 *subdivision shall prevent a court from holding a hearing*
5 *or status conference sooner than the time prescribed in*
6 *this subdivision for the purpose of determining the status*
7 *of the service of the summons and the complaint, if there*
8 *is no proof of service on file with the court.*

9 (f) Article 3 (commencing with Section 2016) of
10 Chapter 3 of Title 3 of Part 4 of the Code of Civil
11 Procedure shall govern discovery, except in arbitration
12 proceedings, ~~and the time periods set forth in that article~~
13 ~~may not be shortened by local rule.~~

14 (g) An order referring an action to arbitration or
15 mediation may be made at any status conference held in
16 accordance with subdivision (e), provided that any
17 arbitration ordered may not commence prior to 210 days
18 after the filing of the complaint, exclusive of the
19 stipulated period provided in subdivision (d). Any
20 mediation ordered pursuant to Section 1775.3 of the Code
21 of Civil Procedure may be commenced prior to 210 days
22 after the filing of the complaint, exclusive of the
23 stipulated period provided in subdivision (d). No rule
24 adopted pursuant to this article may contravene Sections
25 638 and 639 of the Code of Civil Procedure.

26 (h) Unnamed (DOE) defendants shall not be
27 dismissed prior to the conclusion of the introduction of
28 evidence at trial, except upon stipulation or motion of the
29 parties.

30 (i) Notwithstanding Section 170.6 of the Code of Civil
31 Procedure, in direct calendar courts, challenges pursuant
32 to that section shall be exercised within 15 days of the
33 party's first appearance. Master calendar courts shall be
34 governed solely by Section 170.6 of the Code of Civil
35 Procedure.

36 (j) This section applies to all cases subject to this article
37 which are filed on or after January 1, 1991.

38 (k) This section shall remain in effect only until
39 January 1, 1999, and as of that date is repealed, unless a

1 later enacted statute, which is enacted before January 1,
2 1999, deletes or extends that date.

3 SEC. 8. Section 68616 of the Government Code is
4 amended to read:

5 68616. Delay reduction rules shall not require shorter
6 time periods than as follows:

7 (a) Service of the complaint within 60 days after filing.
8 Exceptions, for longer periods of time, may be granted as
9 authorized by local rule *and shall be granted on a showing*
10 *that service cannot be achieved within the time required*
11 *with the exercise of due diligence.*

12 (b) Service of responsive pleadings within 30 days
13 after service of the complaint. The parties may stipulate
14 to an additional 15 days. Exceptions, for longer periods of
15 time, may be granted as authorized by local rule.

16 (c) Time for service of notice or other paper under
17 Sections 1005 and 1013 of the Code of Civil Procedure and
18 time to plead after service of summons under Section
19 412.20 of the Code of Civil Procedure shall not be
20 shortened except as provided in those sections.

21 (d) Within 30 days of service of the responsive
22 pleadings, the parties may, by stipulation filed with the
23 court, agree to a single continuance not to exceed 30 days.

24 It is the intent of the Legislature that these stipulations
25 not detract from the efforts of the courts to comply with
26 standards of timely disposition. To this extent, the Judicial
27 Council shall develop statistics that distinguish between
28 cases involving, and not involving, these stipulations.

29 (e) No status conference, or similar event, other than
30 a challenge to the jurisdiction of the court, may be
31 required to be conducted sooner than 30 days after
32 service of the first responsive pleadings, or no sooner than
33 30 days after expiration of a stipulated continuance, if any,
34 pursuant to subdivision (d). *However, nothing in this*
35 *subdivision shall prevent a court from holding a hearing*
36 *or status conference sooner than the time prescribed in*
37 *this subdivision for the purpose of determining the status*
38 *of the service of the summons and the complaint, if there*
39 *is no proof of service on file with the court.*

1 (f) Article 3 (commencing with Section 2016) of
2 Chapter 3 of Title 3 of Part 4 of the Code of Civil
3 Procedure shall govern discovery, except in arbitration
4 proceedings, ~~and the time periods set forth in that article~~
5 ~~may not be shortened by local rule.~~

6 (g) No case may be referred to arbitration prior to 210
7 days after the filing of the complaint, exclusive of the
8 stipulated period provided for in subdivision (d). No rule
9 adopted pursuant to this article may contravene Sections
10 638 and 639 of the Code of Civil Procedure.

11 (h) Unnamed (DOE) defendants shall not be
12 dismissed prior to the conclusion of the introduction of
13 evidence at trial, except upon stipulation or motion of the
14 parties.

15 (i) Notwithstanding Section 170.6 of the Code of Civil
16 Procedure, in direct calendar courts, challenges pursuant
17 to that section shall be exercised within 15 days of the
18 party's first appearance. Master calendar courts shall be
19 governed solely by Section 170.6 of the Code of Civil
20 Procedure.

21 (j) This section applies to all cases subject to this article
22 which are filed on or after January 1, 1991.

23 (k) This section shall become operative on January 1,
24 1999.

